

AALS Section on Aging and the Law

Newsletter--Spring 2006

Marguerite Angelari, Editor

Section Officers

Chair Susan N. Gary, University of Oregon School of Law
Ph: (541) 346-3856, sgary@law.uoregon.edu

Chair-Elect Kate Mewhinney, Wake Forest University School of Law, Ph: (336) 713-8630, mewhinka@law.wfu.edu

Secretary: Marguerite Angelari, Loyola University Chicago School of Law, Ph: (312) 915-7835, mangela@luc.edu

Executive Committee

Above Officers and:

Jonathan Barry Forman, University of Oklahoma Law Center, Ph: (405) 325-4779, jforman@ou.edu

Janice Kay McClendon, Stetson University College of Law, Ph: (727) 562-7364, jmcclend@law.stetson.edu

Calvin Pang, University of Hawaii William S. Richardson School of Law
Ph: (808) 956-7474, calvinp@hawaii.edu

News From the Chair, Susan Gary

Plan Ahead: Mediation and the Elderly at the Annual Meeting

The Annual Meeting program will bring together leaders from elder law and alternative dispute resolution. The program title, Mediation and the Elderly, may be a bit pedestrian, but program chair **Susan Gary** promises that the speakers will be anything but.

As a person ages, a variety of difficult disputes are likely to arise. An elder person may have diminished mental capacity or physical ability; she may want to avoid family conflict; or she may be frightened or nervous about the subject of the dispute. Family members involved may carry emotional baggage that makes working with each other difficult. Finances may be a complicating factor.

Disputes may arise in connection with a legal guardianship for an elder person. Children may fight over who is the best person to act as guardian; child and parent may fight about whether a guardianship is needed at all; and family members may fight over whether moving an elder person makes sense. **Mary Radford** will talk about the use of mediation to resolve these issues, and **Kate Mewhinney** will describe experiences with a North Carolina statute enacted just a year ago to promote the use of mediation in guardianship proceedings.

Health care issues raise significant questions. As developments in medical technology enhance the ability to prolong life, patients, families and clinical caregivers may find themselves taking different positions on the question of what is medically viable, financially responsible and ethically appropriate. How a “culture of life” should approach the inevitability of death poses conundrums that are producing ever more fractured responses. Consequently, philosophers, ethicists, law-makers, and medical experts appear to have given up on the possibility of achieving substantive consensus, and have turned to mediation to navigate these dangerously divided shoals. Whether mediation is up to the task, and how mediators might go about “solving” these dilemmas will be among the topics addressed by **Carol Liebman** and **Ellen Waldman**.

An elder person making decisions about how property should be distributed after her death may be concerned about the possibility of family fights over the property. A dispute resolution clause included in the will may assuage the testator’s concerns and may also prove beneficial to the beneficiaries after the testator’s death. **Lela Love** will describe the potential effects of using dispute resolution clauses in wills.

Annual Meeting Poster Session

The poster presentations at the 2006 Annual Meeting were a great success, so the AALS will continue the poster sessions this year. Our Section will sponsor posters, so now is a good time to think about a poster presentation for the 2007 Annual Meeting.

A poster presentation should present the thesis and conclusion of the author’s research or describe teaching innovations. Posters should not be used to promote a particular school program, project, or book. Any faculty member or professional staff member can submit a poster proposal. The Section’s Executive Committee will serve as a review committee to select posters for

display. The posters will be on display during the meeting, and there will be a one-hour slot for Aging and the Law presenters to present their posters.

Posters cannot exceed 3ft by 4ft and should be mounted on form core poster board or other hard backing to enable display on an easel. Posters should be easily read from 2-3 feet away, text should be limited, and 3-6 graphics should be included to make the posters more engaging.

The deadline for submission of abstracts and posters is September 1. The AALS will send more information about requirements and recommendations in the next few weeks.

Member News and Accomplishments

Richard L. Kaplan (Illinois) published an article entitled "Federal Tax Policy and Family-Provided Care for Older Adults" in 25 Virginia Tax Review 509 (2005). This article is the first examination of how federal tax policy affects the informal family caregivers who provide most of the long-term care for older Americans. It is available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=877491. Richard has also published a critique of Medicare Part D as "The Medicare Drug Benefit: A Prescription for Confusion," 1 NAELA Journal 167 (2005). That article can be accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=871249. In addition, his review of the book, Death by a Thousand Cuts: The Fight over Taxing Inherited Wealth by Yale law professor Michael J. Graetz and Yale political science professor Ian Shapiro appeared at 58 National Tax Journal 831 (2005).

Rebecca C. Morgan reports that Stetson recently finished a 19 month demonstration project on elder consumer protection. Funded by a grant from the Administration on Aging, this project had three components: education of elder consumers, education of professionals and data collection. The project conducted presentations, consumer forums, PSAs, and a web page for consumers <http://elder.law.stetson.edu>. The project also held a national symposium and regional trainings and created a web page for professionals, <http://elder.law.stetson.edu/professional> and developed a "tool kit" for senior centers on how to incorporate consumer protection activities into their centers and resources for attorneys who may want to do presentations on consumer fraud. Finally, a replication manual was created for law schools that might want to duplicate some (or all) of the project. If you would like a copy of the replication manual, or have any questions, email Rebecca at morgan@law.stetson.edu.

Kate Mewhinney (Wake Forest) will serve again as Program Director for the law school's summer program in Venice, Italy and will teach "Comparative Law and Aging." If you know of interesting articles on this topic, please contact her at mewhinka@law.wfu.edu. Grazie mille!

Kate's article, "Gifts with Powers of Attorney -- Are We Giving the Public What it Wants?" appeared in The North Carolina State Bar Journal and in the ABA's "Experience Magazine" (Senior Lawyers Division). Already a Certified Superior Court Mediator, Prof. Mewhinney has gained additional certification to handle guardianship and estate disputes, under a new state law. She recently mediated a \$1.25 million case involving breach of fiduciary duty. Kate was a presenter at the annual CLEs of the NC Bar Association Elder Law Section and Dispute Resolution Section.

Kim Dayton (William Mitchell) has been elected to a two year term on the Board of Directors of the National Academy of Elder Law Attorneys. Kim will also co-chair (with **Katherine Pearson**, Penn State Dickinson School of Law) NAELA's newly formed Diversity/Academic Connections Task Force. The third edition of her casebook Elder Law: Readings, Cases and Materials (Lexis-Nexis)(co-authored with Molly Wood, University of Kansas, and Julia Belian, Creighton) and its statutory supplement will be published in the fall of 2006. Kim has been named as a Distinguished Fellow of the Canadian Centre for Elder Law Studies.

Joan Krause (Univ. of Houston) has been promoted to Full Professor. Congratulations Joan!!!!

Marshall Kapp (Southern Illinois) reports the following publications: "Making Patient Safety and a 'Homelike' Environment Compatible: A Challenge for Long Term Care Regulation," 12 WIDENER LAW REVIEW 227 (2005). "Patient Autonomy in the Age of Consumer-Driven Health Care: Informed Consent and Informed Choice," 2 JOURNAL OF HEALTH & BIOMEDICAL LAW (Suffolk University School of Law) (2005). "Informed Consent Implications of Diagnostic Evaluations for Dementia," 21 AMERICAN JOURNAL OF ALZHEIMER'S DISEASE AND OTHER DEMENTIAS 24-27 (January/February 2006). "Ethical and Legal Issues in Research Involving Human Subjects: Do You Want a Piece of Me?" 59 JOURNAL OF CLINICAL PATHOLOGY 335-339 (April 2006). Editorial, "The U.S. Supreme Court Decision on Assisted Suicide and the Prescription of Pain Medication: Limit the Celebration," 2 JOURNAL OF OPIOID MANAGEMENT 73-74 (March/April 2006).

Jonathan Barry Forman (Univ. of Oklahoma) has conducted the following presentations: Tax Considerations in a Mandatory Universal Pension System, in response to the Society of Actuaries "Re-envisioning Work and Retirement in the 21st Century" Call for Papers (Washington, DC, May 3-4, 2006) (with Adam Carasso of the Urban Institute). Making Universal Health Care Work, speech for the John Marshall Law School program on The Future of Employer-Provided Health Benefits, Chicago, Illinois, April 28, 2006.

Linda S. Whitton (Valparaiso) reports that the Uniform Power of Attorney Act will be presented for a final reading and approval before the National Conference of Commissioners on Uniform State Laws in July. If approved, the Uniform Power of Attorney Act will replace the Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform Probate Code. Prior to appointment of the Drafting Committee for the new act, a national study of state legislative trends was conducted by Professors **Linda Whitton, Susan Gary, Rebecca Morgan, and Karen Boxx**. This study was then followed by a national survey. Informed by the study, survey results, and comments from many lawyers and professional groups, the Act was drafted to reflect current legislative trends and collective best practices. The most recent draft is available at <http://www.law.upenn.edu/bll/ulc/dpoaa/interimdraft040706.htm>, and the Annual Meeting draft should be available on the NCCUSL web site by mid-June. If you have questions or comments about the Act, you may address them to the Reporter, Prof. Linda Whitton, at linda.whitton@valpo.edu.

Ann Murphy (Gonzaga) reports that she is teaching Comparative Elder Law in Florence, Italy right now in connection with the Gonzaga in Florence program. This is a 4 week, 2 credit hour class and she is teaching it for the first time.

Russ Carlisle reports that the Florida legislature has adjourned for the year without taking any action to modify Schiavo or the statue relating to oral advance directives in fact Jeb Bush could not get anyone in either house of the Florida legislature to introduce such a bill.

John K. Eason (Tulane) just published Policy, Logic, and Persuasion in the Evolving Realm of Trust Asset Protection, 27 Cardozo L. Rev. 2611 (2006). The article may be of interest to those in the field of Elder Law in that Part V relates in some detail recent federal initiatives in several areas (e.g., tax, bankruptcy) to the Elder Law topic of Medicaid Planning. The article as published is available for download on SSRN.

Katherine Pearson (Dickinson) has been selected by the Pennsylvania Bar Association Board of Governors to receive a "Special Achievement Award" for "extraordinary legislative efforts in 2005 on behalf of the Pennsylvania Bar Association's Elder Law Section." The award will be presented on June 8, 2006. Katherine also reports that two Penn State Dickinson School of Law students, Irene Kang and Jacqueline Olexy, in her Elder Law Clinic have had articles addressing diversity issues in elder law accepted for publication by the National Academy of Elder Law Attorneys. One of these students, Jacqueline Olexy, was the top prize winner in NAELA's Student Writing Competition, receiving a cash award and all expenses paid for attendance at NAELA's Symposium in April, 2006.

Marguerite Angelari (Loyola Chicago) reports that Loyola's president approved the law faculty vote to offer Marguerite a long-term clinical contract. The Elder Law Initiative received a one year grant from the Dr. Scholl Foundation to fund two teaching fellowships--one in law and one in social work. With the addition of these fellows, graduate social work students were incorporated into the Elder Law Clinic this past semester. Social work and law students were paired to work on adult guardianship and elder abuse cases and conduct presentations at senior housing facilities on the importance of drafting advance directives for health care. Following their presentations, students return to these facilities to draft documents for interested seniors. Marguerite reports the following presentations: "When Abusers Seek Guardianship: A Qualitative Look at the Intersection of Elder Abuse Investigations and Adult Guardianship Proceedings, " poster presentation, national conference of the Association of American Law Schools, January, 2006 "Self-Neglect and Dementia: A Case Based Approach," co-presenter, Joint Conference of the National Council on Aging and the American Society on Aging, Anaheim, California, March, 2006.

* This newsletter is a forum for the exchange of points of view. Opinions expressed here are not necessarily those of the Section and do not necessarily represent the position of the Association of American Law Schools.